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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1132 OF 1991**

Mr. Mauris D'Souza

.....Appellant

Versus

Mrs. Catherine D'Souza

.....Respondent

Shri. Harshad Palwe with Shri A.P.Mundurgi for
the Appellant.

Respondent served by publication.

CORAM : ANOOP V. MOHTA, J.

DATE : 20TH DECEMBER, 2005

P.C. :

1. Heard. It is necessary looking to the facts and circumstances of the case and as per the statement made by the Counsel appearing for the Appellant that Respondent-wife has intentionally deserted since December, 1980. Even though the petition was dismissed of the Appellant-Respondent on 10th July, 1989 they are still living separately. The Respondent never attended the Trial Court even when the petition was dismissed. In the present matter in spite of service by a publication in news paper, none appeared for the Respondent-wife. Therefore, in the facts and circumstances of the case under the Provisions of Indian Divorce Act, it is clear case of grant of judicial separation. It is seen from the observations given by the Learned Trial Court that the fact of desertion by the Respondent has been substantially

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supported by the material on record. However, the petition was dismissed on the foundation that the situation were created by the Appellant for her desertion.

2. Taking all these into account including this factum of living separately since 1980 and even after the dismissal of the petition on 10th July, 1989 till this date, I am inclined to grant the application of the Appellant for judicial separation as prayed in Marriage Petition No.1 of 1988. In view of this, the following order.

- a) That the first appeal is allowed.
- b) The impugned judgment dated 10th July, 1989 is quashed and set aside. The application for judicial separation as prayed is granted.
- c) No order as to costs.
- d) Adjourned for further orders on 22nd December, 2005 for filing additional affidavit if any.

ANOOP V. MOHTA, J.